

Richard Mancino (*pro hac vice pending*)  
 rmancino@willkie.com  
 Shaimaa M. Hussein (*pro hac vice pending*)  
 shussein@willkie.com  
 Matthew Dollan (*pro hac vice pending*)  
 mdollan@willkie.com  
**WILLKIE FARR & GALLAGHER LLP**  
 787 Seventh Avenue  
 New York, NY 10019  
 Telephone: (212) 728-8000  
 Facsimile: (212) 728-9000

David W. Evans  
**HAIGHT BROWN & BONESTEEL LLP**  
 Three Embarcadero Center, Suite 200  
 San Francisco, CA 94111  
 Telephone: (415) 546-7500  
 Facsimile: (415) 546-7505  
 devans@hbblaw.com

Richard D. Bernstein (*pro hac vice forthcoming*)  
 1875 K Street, N.W.  
 Washington, D.C. 20006-1238  
 Telephone: (301) 775-2064  
 rbernsteinlaw@gmail.com

*Counsel for Amici Curiae* Christopher Shays, Christine Todd Whitman, Peter Keisler, Carter Phillips, John Bellinger III, Stanley Twardy, and Richard Bernstein

**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 OAKLAND DIVISION**

STATE OF CALIFORNIA, et al.,

*Plaintiffs,*

v.

DONALD J. TRUMP, in his official capacity as  
 President of the United States of America, et al.,

*Defendants.*

**CONSENT MOTION FOR LEAVE TO  
 FILE MEMORANDUM OF  
 CHRISTOPHER SHAYS, CHRISTINE  
 TODD WHITMAN, PETER KEISLER,  
 CARTER PHILLIPS, JOHN BELLINGER  
 III, STANLEY TWARDY, AND RICHARD  
 BERNSTEIN AS *AMICI CURIAE* IN  
 SUPPOT OF PLAINTIFFS' MOTION  
 FOR A PRELIMINARY INJUNCTION**

Case No. 4:19-CV-00872-HSG

P.I. Hearing Date: May 9, 2019

Time: 2:00 PM

SIERRA CLUB and SOUTHERN BORDER  
 COMMUNITIES COALITION,

*Plaintiffs,*

v.

DONALD J. TRUMP, President of the United  
 States, in his official capacity, et al.,

*Defendants.*

Case No. 4:19-CV-00892-HSG

P.I. Hearing Date: May 17, 2019

Time: 10:00 AM

PB99-0000120  
 12965191.1

Case Nos. 4:19-CV-00872-HSG  
 4:19-CV-00892-HSG  
 CONSENT MOTION FOR LEAVE

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 Christopher Shays, Christine Todd Whitman, Peter Keisler, Carter Phillips, John Bellinger  
3 III, Stanley Twardy, and Richard Bernstein respectfully move for leave to file the attached  
4 memorandum as *amici curiae* in the above-captioned matters in support of Plaintiffs' Motion for a  
5 Preliminary Injunction. The *amici* include a former Republican cabinet member, a former  
6 Republican member of Congress, and a former Republican United States Attorney. See Appendix A  
7 to proposed *amici* brief. Counsel for both Plaintiffs and Defendants have consented to filing the  
8 appended *amici* brief. The *amici* have an interest in seeing that the power to make appropriations is  
9 not shifted improperly from Congress to the executive branch.  
10

11 **STATEMENT OF INTEREST AND ARGUMENT**

12 The *amici* brief would be helpful to the Court because the brief focuses on one of the  
13 dispositive merits arguments. That argument is that Section 739 of Division D ("Section 739") of  
14 the Consolidated Appropriations Act 2019, Pub. L. 116-6 ("Consolidated 2019"), prohibits the  
15 proposed use of funds under 10 U.S.C. § 284 ("284"), 10 U.S.C. § 2808 ("2808"), or 31 U.S.C. §  
16 9705 ("9705"), to construct the southern border barrier. Section 739 states in pertinent part: "None  
17 of the funds made available in this or any other appropriations Act may be used to increase . . .  
18 funding for a program, project, or activity as proposed in the President's budget request for a fiscal  
19 year until such proposed change is subsequently enacted in an appropriation Act, or unless such  
20 change is made pursuant to the reprogramming or transfer provisions of this or any other  
21 appropriations Act."  
22

23  
24 Part I of the *amici* brief shows that because the President has requested an increase in funds  
25 that Congress did not enact, Section 739's prohibition applies to all \$6.7 billion of proposed  
26 increased funding. Part II of the *amici* brief shows that none of the proposed uses of 284, 2808, or  
27

9705 satisfies Section 739's exception because none makes an increase in funding solely pursuant to the provisions of an "appropriations Act." Although Section 739 is unambiguous, Part III of the *amici* brief shows that two canons of construction favor interpreting Section 739 to preclude the proposed increased funding.

Dated: April 23, 2019

Respectfully Submitted,

Richard Mancino (*pro hac vice pending*)  
Shaimaa M. Hussein (*pro hac vice pending*)  
Matthew Dollan (*pro hac vice pending*)

David W. Evans

**WILLKIE FARR & GALLAGHER LLP**  
787 Seventh Ave  
New York, NY 10019  
Telephone: (202) 728-8000  
Facsimile: (202) 728-9000

/s/ David W. Evans  
**HAIGHT BROWN & BONESTEEL LLP**  
Three Embarcadero Center, Suite 200  
San Francisco, CA 94111  
Telephone: (415) 546-7500  
Facsimile: (415) 546-7505

Richard D. Bernstein (*pro hac vice forthcoming*)  
1875 K Street, N.W.  
Washington, D.C. 20006-1238  
Telephone: (301) 775-2064

*Counsel for Amici Curiae* Christopher Shays, Christine Todd Whitman, Peter Keisler, Carter Phillips, John Bellinger III, Stanley Twardy, and Richard Bernstein

**CERTIFICATE OF SERVICE**

I hereby certify that on April 23, 2019, I caused the foregoing document to be filed via the U.S. District Court for the Northern District of California's CM/ECF system, which I understand caused service on all registered parties.

/s/ Paula Johnson  
Paula Johnson